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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:

Case No. 22-14422-nmc

MUSCLEPHARM CORPORATION,

Chapter 11 ____

Debtor.

Date: July 31, 2023

Time: 10:00 a.m.

**DECLARATION OF TERESA M. PILATOWICZ IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER**

I, Teresa M. Pilatowicz, make this Declaration under 28 U.S.C. § 1746 and declare as follows:

1. I am over the age of eighteen (18) years and competent to testify to the matters asserted herein, of which I have personal knowledge, except as to those matters stated upon information and belief. As to those matters stated upon information and belief, I believe them to be true.

2. I am an attorney at the law firm of Garman Turner Gordon LLP, counsel to Empery Tax Efficient, LP.

3. I submit this Declaration for all permissible purposes under the Federal Rules of

1 Civil Procedure and Rules of Evidence in support of the *Motion for Protective Order* (“Motion”),¹
2 filed by Empery.

3 4. Between July 16 and July 24, 2023, Drexler’s counsel indicated that if Empery did
4 not designate Mr. Lane as its FRCP 30(b)(6) designee, Drexler would take a second Empery
5 deposition of Mr. Lane.

6 5. Empery noted that a second deposition was not allowed under the scheduling order
7 but stated that it would be willing to consider a deposition of Mr. Lane in lieu of a FRCP 30(b)(6)
8 deposition.

9 6. Empery stated that its FRCP 30(b)(6) designee(s) would be available by Zoom or
10 in New York on August 4, 2023.² Drexler insisted that any deposition occur in Las Vegas, Nevada
11 on August 7 or 8, 2023.

12 7. On July 24, 2023, Empery met and conferred with Drexler on scheduling of the
13 deposition of Empery’s FRCP 30(b)(6) deposition and potentially scheduling the deposition of
14 Ryan Lane in lieu of the FRCP 30(b)(6) deposition. Drexler indicated that it was his right to set a
15 deposition for whenever and wherever he chose and that it was Empery’s obligation to seek a
16 protective order. Drexler stated that the deposition should occur in Nevada out of the convenience
17 for the parties and must be in person.

18 8. On July 24, 2023, Drexler sent a subpoena to Empery for Ryan Lane. The
19 deposition is scheduled for August 7, 2023, at 9:00 a.m. in Las Vegas, Nevada, at Debtor’s
20 counsel’s office. A true and correct copy of the subpoena is attached hereto as **Exhibit “1.”**

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27 ¹ Capitalized terms not otherwise set forth herein shall have those meanings ascribed to them in the Motion.

28 ² While additional availability existed, that availability coincided with other depositions scheduled by Drexler.

EXHIBIT 1

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Counsel for Ryan Drexler

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re

MUSCLEPHARM CORPORATION,

Debtor.

Case No. BK-22-14422-NMC

Chapter 11

NOTICE OF DEPOSITION OF RYAN LANE

PLEASE TAKE NOTICE that, pursuant to Fed. R. Civ. P. 30, made applicable to contested matters by Fed. R. Bankr. P. 7030 and 9014(c), Ryan Drexler, by and through his undersigned counsel, will take the deposition upon oral examination of Ryan Lane, relating to the *Motion for Appointment of a Chapter 11 Trustee* (ECF No. 447).

PLEASE TAKE NOTICE that the deposition shall commence on **Monday, August 7, 2023, at 9:00 a.m.** at the office of Schwartz Law, PLLC, located at 601 East Bridger Avenue, Las Vegas, Nevada 89101, or such other time and place as may be agreed to by the parties. The deposition will take place before a court reporter, notary public, or other person authorized by law to administer oaths, and will be recorded by stenograph, audio, and/or visual means.

1 Dated: July 24, 2023.

2 **STEINHILBER SWANSON LLP**

3 /s/ Michael P. Richman, Esq.

4 MICHAEL P. RICHMAN

5 *Admitted Pro Hac Vice*

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11 *Counsel for Ryan Drexler*

EXHIBIT 2

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Attorneys for Defendant Tim Silver

UNITED STATES DISTRICT COURT

DISTRICT NEVADA

RYAN DREXLER, an individual,

Plaintiff,

v.

TIM SILVER, an individual, DOES 1 to 10;
and ROE CORPORATIONS 1-10,
inclusive,

Defendants.

CASE NO.

**DECLARATION OF TIMOTHY
SILVER**

I, Timothy Silver, make this Declaration under 28 U.S.C. § 1746 and declare as follows:

1. I am over the age of eighteen (18) years and competent to testify to the matters asserted herein, of which I have personal knowledge, except as to those matters stated upon information and belief. As to those matters stated upon information and belief, I believe them to be true.

2. I submit this Declaration for all permissible purposes under the Federal Rules of Civil Procedure and Rules of Evidence in support of the *Defendant Timothy Silver's Motion to Dismiss Pursuant to NRS 41.660, FRCP 12(B)(6), and 12(B)(1)* ("Motion").

3. At all relevant times, I have been a Portfolio Manager with Empery Asset Management, LP. Among other matters, at all relevant times, Empery Asset Management, LP has

1 acted as investment advisor to Empery Master Onshore, LLC ("EMO"), Empery Tax Efficient,
2 LP ("Empery"), Empery Tax Efficient III, LP ("ETE3"), and Empery Debt Opportunity Fund, LP
3 ("EDOF," and collectively with EMO, Empery and ETE3, the "Empery Noteholders"). I am not
4 the Chief Financial Officer of Empery Asset Management, LP or any of the Empery Noteholders.
5 I am not a partner, officer, or director of Empery Asset Management, LP or any of the Empery
6 Noteholders.

7 4. I live and reside in New York. Empery's offices, where I work, are located in New
8 York City, New York.

9 5. To my knowledge, I have never been to Nevada and do not frequently transact
10 business in Nevada, and certainly not in my personal capacity.

11 6. All transactions and communications with Debtor MusclePharm Corporation
12 ("Debtor") have been in my professional capacity as an employee of Empery.

13 7. Included with the Motion is the *Declaration of Timothy Silver in Support of*
14 *Objection to Emergency Motion for Entry of Interim and Final Orders: (I) Authorizing Debtor to*
15 *Obtain Post-Petition Financing, (II) Granting Priming Liens and Administrative Expense Claims,*
16 *(III) Authorizing the Debtor's Use of Cash Collateral, (IV) Modifying the Automatic Stay, and*
17 *(V) Granting Related Relief*, filed in the case styled In re: MusclePharm Corporation, Case No.
18 22-14422-NMC, ECF 52 (Bankr. Nev. Jan. 4, 2023) (the "Silver BK Decl.").

19 8. As set forth in the Silver BK Decl., the basis for the statements made therein was
20 my firsthand experience, through documents I reviewed and attached thereto, or through my
21 viewing publicly filed documents. As to publicly filed documents, I simply reported what was in
22 the documents.

23 9. I was introduced to Plaintiff Ryan Drexler ("Drexler") and Debtor in July 2021.

24 10. All communications made by me about Drexler have been truthful or made without
25 knowledge of their falsehood. Relatedly, I have never made false or knowingly false statements
26 about Drexler to any person, let alone any creditors or media representatives.

27 11. Likewise, the Silver BK Decl. is truthful to the best of my knowledge and was made
28 without knowledge of falsehood of any statements contained therein.

1 12. During the course of the Bankruptcy, I have communicated with Prestige Capital
2 Financing, LLC, as successor by merger to Prestige Capital Corporation ("Prestige"), as well as
3 members of the Creditor's Committee. Those conversations were truthful and made without
4 knowledge of their falsehood, generally, and specifically, as it applied to conversations about
5 Drexler.

6 13. During my conversations with Prestige and the members of the Creditor's
7 Committee, we generally discussed Debtor's assets and liabilities and claims against the Debtor.
8 We discussed many of the items in the Silver BK Decl. in that context.

9 14. Furthermore, as part of Empery's agreements with Debtor, we were able to obtain
10 limited bank statements regarding the Debtor. Attached hereto as Exhibit A-1 is a true and correct
11 copy of Debtor's September 1, 2022, bank statement. The statement reflects \$200,000 being wired
12 to Drexler's personal account. This fact is clearly presented in paragraph 54 of the Silver BK
13 Decl.

14 15. Moreover, I learned through JW Nutritional LLC that in at least October 2022,
15 Drexler directed that payments to Debtor be made directly to Drexler's personal account.

16 16. I have not shared any private or confidential information about Drexler, whether
17 true or untrue, with the public.

18 I declare under penalty of perjury under the laws of the United States of America that the
19 foregoing is true and correct.

20 Executed this 23rd day of March 2023.

21 /s/

22 
23 TIMOTHY SILVER
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